

DOWNEY

29 Merrion Square, D02RW64

**APPEAL AGAINST NOTIFICATION OF
RESIDENTIAL ZONED LAND TAX –
DETERMINATION**

**Lands at Streamstown, Malahide,
Co. Dublin**

Client: [REDACTED]

Parcel ID: FL0000002064

March 2024

TABLE OF CONTENTS

1.0	INTRODUCTION	3
2.0	OVERVIEW OF THE RESIDENTIAL ZONED LAND TAX (RZLT)	3
3.0	PROPERTY LOCATION & DESCRIPTION	6
4.0	PLANNING CONTEXT	7
5.0	RZLT ANALYSIS	7
6.0	GROUNDS OF SUBMISSION	8
7.0	CONCLUSION.....	13
	APPENDIX 1 – LAND REGISTRY MAP AND FOLIO	14

D O W N E Y

© Downey 2024

Downey Planning Document Control			
	Name	Date	Version
Prepared by	Declan Foley Assistant Planner	27/03/2024	V_01_DRAFT
Approved by	Donal Duffy MIPI Director	28/03/2024	FINAL

1.0 INTRODUCTION

DOWNEY, Chartered Town Planners, 29 Merrion Square, D02 RW64, have prepared this submission, to the Draft Residential Zoned Land Tax (RZLT hereinafter). This submission is made on behalf of our client, [REDACTED] in relation to the lands at Streamstown, Malahide, Co. Dublin (Land Registry Folio No's DN171244F, Parcel ID FL0000002064 reference). Our client, Kinwest Ltd., are the registered owners of the land subject to this submission.

This report sets out the grounds of submission and justification to have our client's lands removed from the Draft RZLT Map, as it does not meet the criteria for inclusion as set out under subsection (b) of Section 653B of the Taxes Consolidation Act 1997 nor amendments in the form of Section 92 of the Finance Act 2023. This submission is being made within the appropriate period, i.e., not later than the 1st of April 2024.

2.0 OVERVIEW OF THE RESIDENTIAL ZONED LAND TAX (RZLT)

Introduced originally within the Finance Act 2021, the RZLT aims to activate and incentivise the supply of housing through a new tax initiative targeting lands that are zoned residential. To be applied from 2025 onwards, this annual tax is set at a rate of 3% of the land's market value at the time of valuation and will operate on a self-assessment basis. The annual draft map was published on the 1st of February 2024 and submissions can be made by the public on the annual draft map from said date until the 1st of April 2024. The first liability date for RZLT will be the 1st of February 2025 and this will be based on the annual final map to be published no later than 31st of January 2025. The maps will continue to be revised on an annual basis going forward. Certain properties are excluded from the tax such as existing residential properties liable for Local Property Tax (LPT). RZLT will apply to land that on, or after, 1st February 2025, is:

- Zoned for residential use, and
- Serviced, whereby it has sufficient access to the infrastructure required for residential development, including roads, footpaths, lighting, water supply, sewers and drainage.

As set out in section 653B of the Finance Act 2021, the land which satisfies the relevant criteria is a reference to land that:

“(a) is included in a development plan, in accordance with section 10(2) (a) of the Act of 2000, or local area plan, in accordance with section 19(2)(a) of the Act of 2000, zoned—

(i) solely or primarily for residential use, or

(ii) for a mixture of uses, including residential use,

(b) it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development, and

(c) it is reasonable to consider is not affected, in terms of its physical condition, by matters to a sufficient extent to preclude the provision of dwellings, including contamination or the presence of known archaeological or historic remains, but which is not land—

(i) that is referred to in paragraph (a)(i) and, having regard only to development (within the meaning of the Act of 2000) which is not unauthorised development (within the meaning of the Act of 2000), is in use as premises, in which a trade or profession is being carried on, that is liable to commercial rates, that it is reasonable to consider is being used to provide services to residents of adjacent residential areas,

(ii) that is referred to in paragraph (a)(ii), unless it is reasonable to consider that the land is vacant or idle,

(iii) that it is reasonable to consider is required for, or is integral to, occupation by—

(I) social, community or governmental infrastructure and facilities, including infrastructure and facilities used for the purposes of public administration or the provision of education or healthcare,

(II) transport facilities and infrastructure,

(III) energy infrastructure and facilities,

(IV) telecommunications infrastructure and facilities,

(V) water and wastewater infrastructure and facilities,

(VI) waste management and disposal infrastructure, or

(VII) recreational infrastructure, including sports facilities and playgrounds,

(iv) that is subject to a statutory designation that may preclude development, or

(v) on which the derelict sites levy is payable in accordance with the Derelict Sites Act 1990.”

Subsequently, as set out in Section 92 of the new Finance Act 2023, Section 653B of the Principal Act was amended in several ways.

It of significant relevance to this submission that these subject alterations included the provision of 653K(f) requiring information provided in updated Uisce Éireann capacity registers which are generally published in June of each year to be utilised to update maps where a settlement no longer has wastewater or water treatment capacity and as such does not meet the criteria set out in section 653B(b).

“(3) The Principal Act is amended by the substitution of the following section for section 653K:

653K. A local authority shall—

(a) taking into account the inclusion of sites in the supplemental map prepared by it,

(b) having given due consideration to the submissions, if any, received by it in accordance with sections 653D and 653G regarding the date on which land constituting a site first satisfied the relevant criteria,

(c) reflecting the determinations, if any, made under section 653E and 653H or, where any such determination has been appealed under section 653J, the decision in the appeal relating to that determination,

(d) reflecting changes to the zoning of land as a result of—

(i) a review of the development plan concerned carried out under section 11 of the Act of 2000,

(ii) the variations, if any, made to the development plan concerned under section 13 of the Act of 2000,
or

(iii) the making or amendment of a local area plan under section 20 of the Act of 2000, since the publication by the local authority of a draft map in accordance with section 653C, as a result of which the land is no longer land which satisfies the relevant criteria,

(e) reflecting the determination of applications, if any, made—

(i) to retain unauthorised development, pursuant to section 34(12C) of the Act of 2000, or

(ii) for substitute consent, in accordance with section 177E of the Act of 2000,

and

(f) reflecting the effect of any changes in service capacity as regards water supply or wastewater treatment, as the case may be, as detailed in a register published by a statutory undertaker (within the meaning of the Act of 2000) since the publication by the local authority of a draft map in accordance with section 653C, as a result of which land having previously satisfied the relevant criteria no longer satisfies the relevant criteria, make such revisions to the draft map as it considers appropriate and publish, no later than 1 December 2023, a map (in this Part referred to as a ‘final map’) specifying—

(I) the date on which land identified on the map first satisfied the relevant criteria, where that date is after 1 January 2022, and

(II) the total area, in hectares, of land identified on the map”.

As detailed within the Act, lands located in any settlements no longer meeting the criteria should be removed from the annual final map to be published each year on 31st January from 2025 onwards. The inclusion of land which may fall into scope as a result of the updated capacity registers will be considered only as part of the subsequent annual draft map.

Despite the administration of RZLT being within the Revenue Commissioners’ remit, in order to identify lands that are liable to RZLT, local authorities have published draft maps of lands that meet the relevant criteria and can potentially be subject to the RZLT. Published on the 1st of February 2024, the draft maps are available to the public via the Councils’ websites.

3.0 PROPERTY LOCATION & DESCRIPTION

The lands at Streamstown, which extend to approximately 1.64 hectares, are located in the southwest of Malahide, Co. Dublin and is accessed from Carey's Lane, via Streamstown Lane. The Walled Garden of Auburn is located to the east of the lands and Clairville Lodge is located to the south.

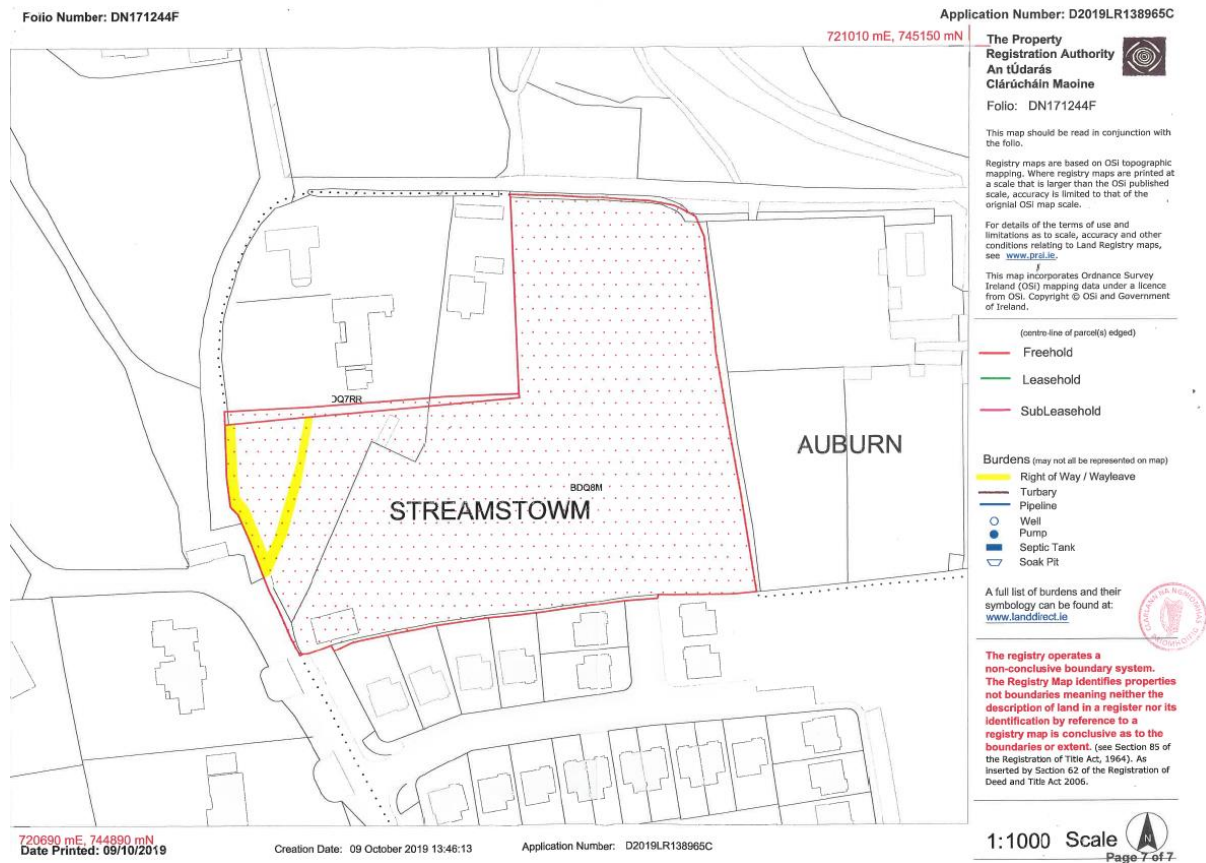


Figure 1: Exert from Land Direct Map (lands outlined in red)

It is noted that these lands are subject of two planning applications which are currently under consideration of An Bord Pleanála, which can be summarised as follows:

- **ABP Case Ref. [REDACTED]**: A proposed SHD was lodged with the Board on 19th April 2022, consisting of Preservation of Auburn House (a Protected Structure) and stables as 1 no. residential dwelling, conversion of stables to provide storage space for Auburn House, construction of 368 no. residential units (87 no. houses, 281 no. apartments), creche and associated site works. This case has an overdue decision date for the 8th of August 2022.
- **Reg. Ref. [REDACTED]**: A proposed development consisting of the preservation and protection of the existing Protected Structure of Auburn House and its stables as 1 no. residential dwelling; the conversion of the existing stables of Auburn House to provide for storage space for the main Auburn House and the construction of 69 no. residential units comprising 35 no. houses (1 no. single storey 2-bedroom house, 8 no. two storey 3-bedroom houses, and 26 no. two storey 4-bedroom houses) comprising detached, semi-detached and terraced type houses, all with associated surface level car parking, and 1 no. four storey apartment block

(Block 1) consisting of 34 no. units (comprising 10 no. 1-bedroom units, 20 no. 2- bedroom units and 4 no. 3- bedroom units), all provided with private balconies/terraces and associated surface level car parking and bicycle parking with refuse stores, bicycle store and plant at ground floor level; landscaping; the preservation of existing follies and walls associated with the existing Walled Garden with amendments to the existing Walled Garden proposed to accommodate the proposed development; boundary treatments; public lighting; 1 no. ESB unit substation; the construction of a new vehicular and pedestrian/cycle access from Carey's Lane. By Order dated 29th March 2023, Fingal County Council granted permission for the development. The proposal was subsequently appealed to An Bord Pleanála, with the case having an overdue decision date for the 28th of July 2023.

4.0 PLANNING CONTEXT

Under the current Fingal County Development Plan 2017-2023, the subject site is zoned "RA – Residential Area" which seeks:

"Provide for new residential communities subject to the provision of the necessary social and physical infrastructure."

The vision for the "RA – Residential Area" seeks to:

"Ensure the provision of high quality new residential environments with good layout and design, with adequate public transport and cycle links and within walking distance of community facilities. Provide an appropriate mix of house sizes, types and tenures in order to meet household needs and to promote balanced communities."

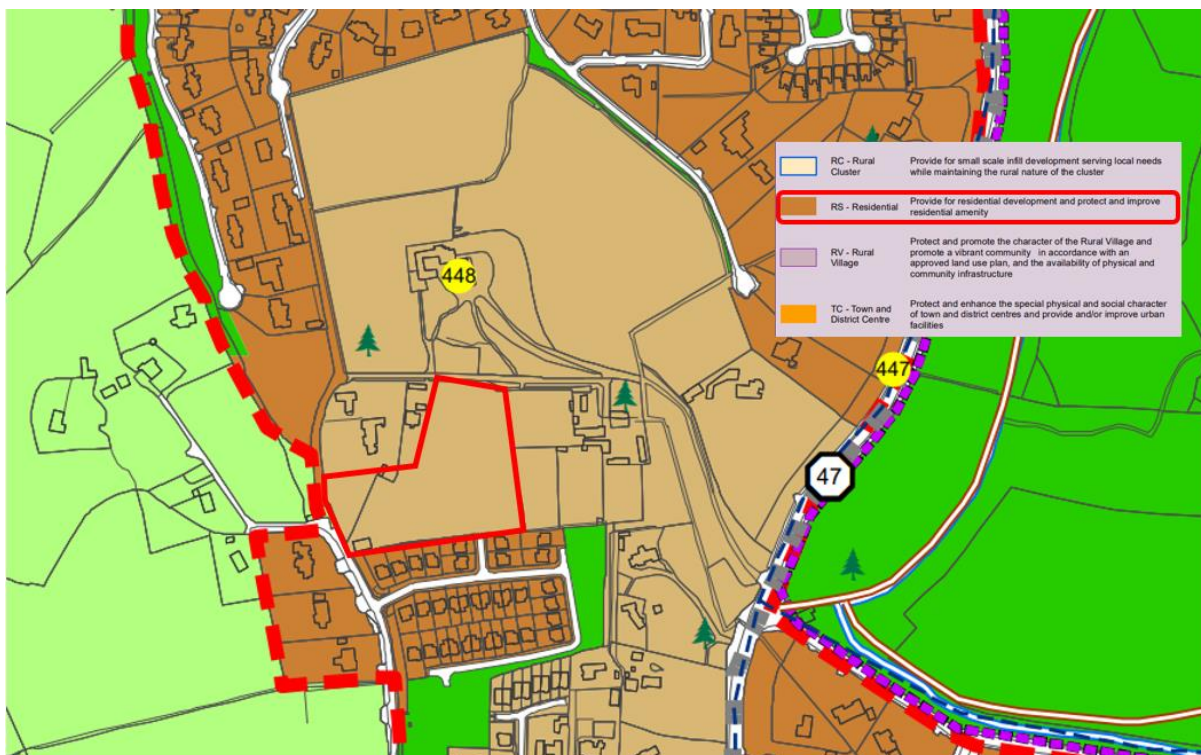


Figure 3. Fingal County Council Land Use Zoning Map, 2017-2023 (lands outlined in red)

5.0 RZLT ANALYSIS

As shown in Figure 4, the lands have been identified as 'in-scope' lands subject to the tax under Draft RZLT Map by Fingal County Council. It is submitted that the lands are not immediately serviced as there is no Irish Water sewer either on Carey's Lane/Streamstown Lane or Malahide Road, in front of the subject site, to which any proposed development on the lands could drain. Furthermore, there is an established and registered deficiency in the capacity of the foul water network of the Malahide area and which can act to restrict residential development from taking place without further upgrade works taking place on the network.

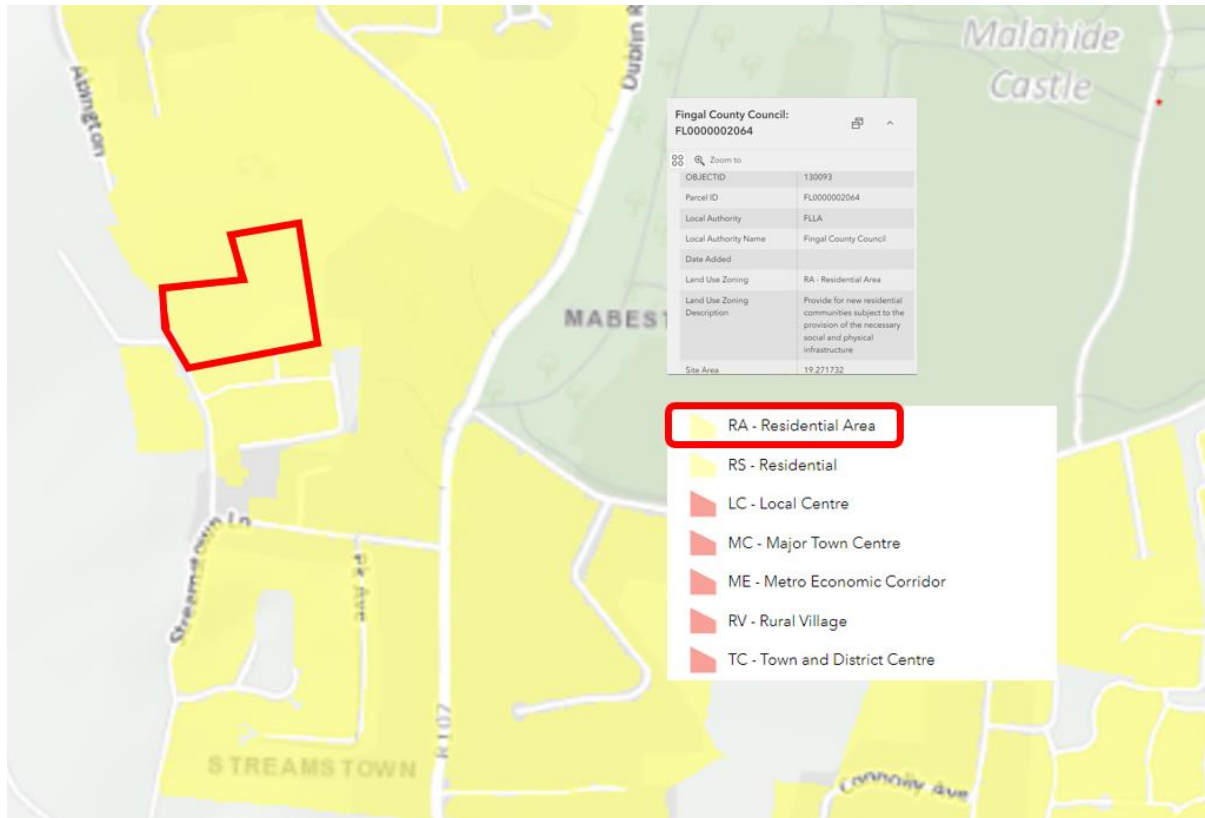


Figure 4. Location of Subject Lands within the Draft RZLT Map.

6.0 GROUNDS OF SUBMISSION

DOWNEY submit that the subject land holding identified under Folio No DN171244F and included within the Draft RZLT Annual Map under Parcel ID: FL000002064 does not meet the eligibility criteria under **Section 653B** of the Taxes Consolidation Act 1997, as amended. Lands in order to be within scope of the RZLT must both be:

- i. Primarily residential and;
- ii. Serviced.

Specifically, it is our considered opinion that these specific lands at Auburn do not meet the criteria set under the following sub section (b) of Section 653B:

(b) it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage

and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development,

As of present, it is submitted that the subject site is not sufficiently serviced with regard to foul water drainage. Indeed, there is no current Uisce Éireann water sewer located on Malahide Road, in front of the subject site, to which any proposed development on the lands could drain.

This deficiency forms part of an established and well-known restriction in the capacity of the foul water network of the local Malahide area which can act to restrict residential development from taking place without further upgrade works taking place on the network.

Given that there is no existing foul water network under the Malahide Road, and given the existing topography of the surrounding area, it would be necessary to pump wastewater from the site in order for residential development to occur.

Therefore, the lands are currently not 'connected' to the existing wastewater network. They may be only 'able to connect' to the network following the appropriate planning permission being obtained and to date, planning permission has not been obtained on the lands. The timeline for obtaining a final grant of permission for said works will take a significant period of time.

As part of the proposed developments (referenced previously in this report), it is proposed to drain wastewater to a proposed new pumping station near the existing Auburn House site entrance off the Malahide Road. From there, a new gravity sewer main must be laid and extending for over 2km from the entrance to Auburn on the Malahide Road, moving east under Back Road and then down Kinsealey Lane.

It is submitted that these works required to connect to any existing services must require planning permission and thus cannot be carried out without specific permission being granted. While if the subject and local area was more appropriately serviced a simple connection to an adjoining manhole may be considered acceptable by a Local Authority, with a road opening licence and connection agreement, in order to develop the subject lands which are the subject of this submission, as noted previously, and as illustrated by Figure 4, appropriately servicing the subject lands for development would require c. 2km of new foul mains is required to be laid below the public road.

To provide residential development on the site, materially significant works are required in relation to wastewater management and infrastructure. Materially significant works can be defined as works which require access to 3rd party lands which are in private ownership or would require CPO or planning permission in themselves. It is important to note that no final grant of permission has been provided for these works, which are necessary to serve any future residential development of the subject site.

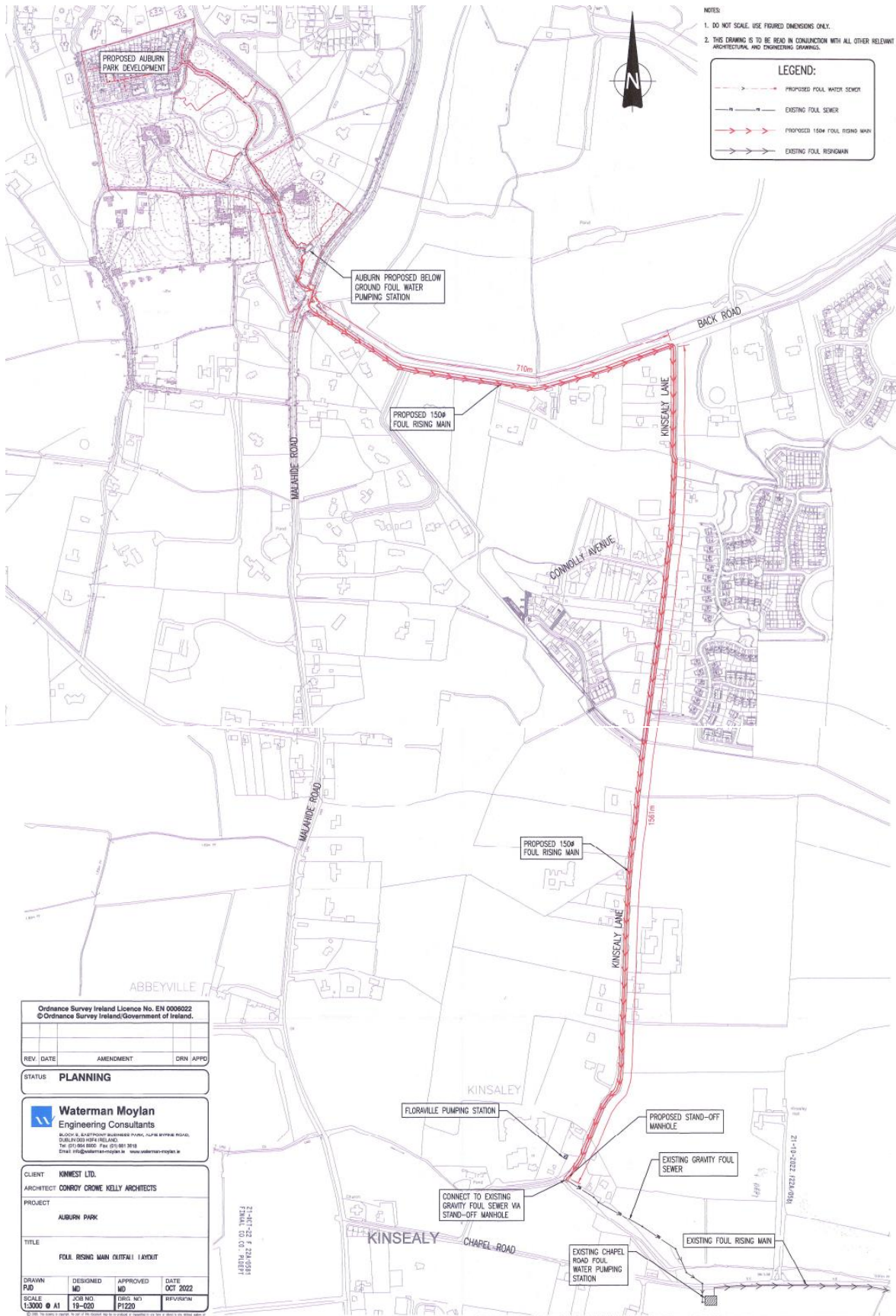


Figure 4: Foul Rising Main Outfall Layout as proposed under Reg. Ref F22A/0581 (and TA06F.313360).

That said and with respect to the RZLT's aim to activate existing planning permissions and zonings, where housing is permitted, the current development potential of the site is clearly adversely affected by the subject highlighted deficiencies in wastewater infrastructure provision.

The subject site, therefore, is not currently serviced nor has no realistic possibility of being serviced in the immediate future, thus DOWNEY are of the professional opinion that under current circumstances, the lands are not within the scope of an RZLT map, and therefore, should be exempt from RZLT. In regard to the subject site there is no valid reasoning for the application of this RZLT tax on these lands. It is submitted that the application of this tax on the lands subject to this submission would only serve to financially penalise our client rather than increasing housing supply and incentivising development as has been the intention of the RZLT from its inception.

In terms of serviceability of the lands, there is only a 12" (c. 300mm) diameter water supply main in the R107 Malahide Road. **There is no gravity sewer within the Malahide Road in front of the subject site.** The closest gravity sewer is located in the Swords Road, approximately 670m north of the proposed access onto the Malahide Road. There are three existing pumping stations in the vicinity of the site: Connolly Avenue Pumping Station (Irish Water), Abington / Gaybrook Stream Pumping Stations, Clairville Lodge Pumping Station. However, there is no capacity within these to facilitate a proposed residential development on these lands. Table 11.1 of the Fingal Development Plan clearly confirms the Council's awareness of this deficiency in the network with "*a project planned and to be completed within the lifetime of the FDP*".

It is noted that the lands are not immediately serviced by wastewater facilities. As outlined within Uisce Éireann's response to a pre-connection enquiry the development at the site is only feasible subject to the delivery of the following:

"A new Kinsealy Lane Pumping Station (Castleway Pumping Station):

- A. Delivery of a new pumping station to serve the existing and future Connolly Avenue pumping station catchment.*
- B. Procurement of additional lands to facilitate the provision of a total storage volume of 530m³. This includes 362m³ of existing storage at the site. An additional 168m³ storage volume and associated area is required.*
- C. Identification of the required changes to the Malahide discharge licence.*
- D. All environmental (assimilative capacity of receiving water), archaeological and statutory assessments.*
- E. Increase the capacity of the new Chapel Lane pumping station (Capital Investment Plan project) from 53l/s to 94l/s.*
- F. Upgrade to the gravity network to the new Castleway Pumping Station.*
- G. Upgrade the foul network downstream of the new Castleway Pumping Station to connect to the new Chapel Lane Pumping Station.*
- H. Provision of Mechanical Electrical and Instrumentation, Control and Automation (MEICA).*
- I. Scope of works requirements to incorporate existing MEICA operational requirements (FCC/Irish Water).*

Interim Solution:

- *New Rising Main from the proposed site to the Floraville Pumping Station bypass (subject to the delivery of the Chapel Lane Pumping Station (CIP, Local Network Reinforcement Project)*
- *The overall design to allow the proposed Rising Main on Kinsealy Lane to be transferred to a new Kinsealy Lane Pumping Station (Castleway Pumping Station) upon its completion*
- *Rising Main design to provide for flows from the Castleway Pumping Station and also septicity issues.*

Irish Water does not have any plans, in the current Capital Investment Programme (CIP), to undertake these upgrades to facilitate this connection. Should you wish to progress upgrades and associated works, Irish Water may require you to provide a contribution of a relevant portion of the costs for the required upgrades. Engagement with Irish Water will be required to agree the delivery mechanism for the upgrades.

Completion of the Chapel Lane Pumping Station (CIP, Local Network Reinforcement Project) and rising main to the North Fringe Sewer. This upgrade project is currently in progress and scheduled to be completed by Q4 2021 (this may be subject to change)".

As stated earlier, in order to provide residential development on these lands, materially significant works are required in relation to wastewater management. Materially significant works can be defined as works which require access to 3rd party lands which are in private ownership or would require CPO or planning permission in themselves. The above listed works from Irish Water involve over 2km of new foul sewer mains to be laid under the Malahide Road, Back Road and Kinsealey Lane.

It must be emphasised that under Section 653B of the Taxes Consolidation Act, 1997, the criteria set out in subsection (b) of that Act states must be fulfilled before the RZLT may be applied to any land. In this regard, it states:

(b) it is reasonable to consider may have access, or be connected, to public infrastructure and facilities, including roads and footpaths, public lighting, foul sewer drainage, surface water drainage and water supply, necessary for dwellings to be developed and with sufficient service capacity available for such development.

It is evident in this instance that the lands at Auburn do not meet the criteria set out in subsection (b) of the Act and therefore the RZLT cannot be applied as the lands must be considered 'outside the scope' of the tax.

The subject lands should also be discussed with regards to the new provision of 653K(f) the Taxes Consolidation Act, 1997 which requires information provided in updated Uisce Éireann capacity registers, which are generally published in June of each year, to be utilised by Local Authorities and An Bord Pleanála in order to update maps where a settlement no longer has waste-water or water treatment capacity and as such does not meet the criteria set out in section 653B(b).

DOWNEY wish to stress that while the subject lands concerned with this submission are considered to be within a 'Capacity Available - Level of service (LoS) improvement required' area (Fingal - Swords) as per the current Uisce Eireann Water Supply Capacity Register, at a local level, as demonstrated

throughout this submission, there is a clear deficiency in regard to the necessary wastewater infrastructure needed to facilitate this development.

Not only is the site not adequately serviced, but as noted previously, in order to enable development, a new gravity sewer main would have to be laid, with such extending for over 2km under mainly public roads from the entrance to Auburn on the Malahide Road to Kinsealey Lane.

DOWNEY submit that currently, severe local level drainage and wastewater connection issues are clearly present as highlighted throughout this submission, and that the extent of such capacity constraints and, in turn, the extensive material works needed in order adequately service the site area as a result, illustrate that the subject site cannot rationally be considered to be within the remit of the Residential Zoned Land Tax.

It is evident in this instance that the lands at Steamstown do not meet the criteria set out in subsection (b) of the Act and therefore the RZLT cannot be applied as the lands must be considered 'outside the scope' of the tax.

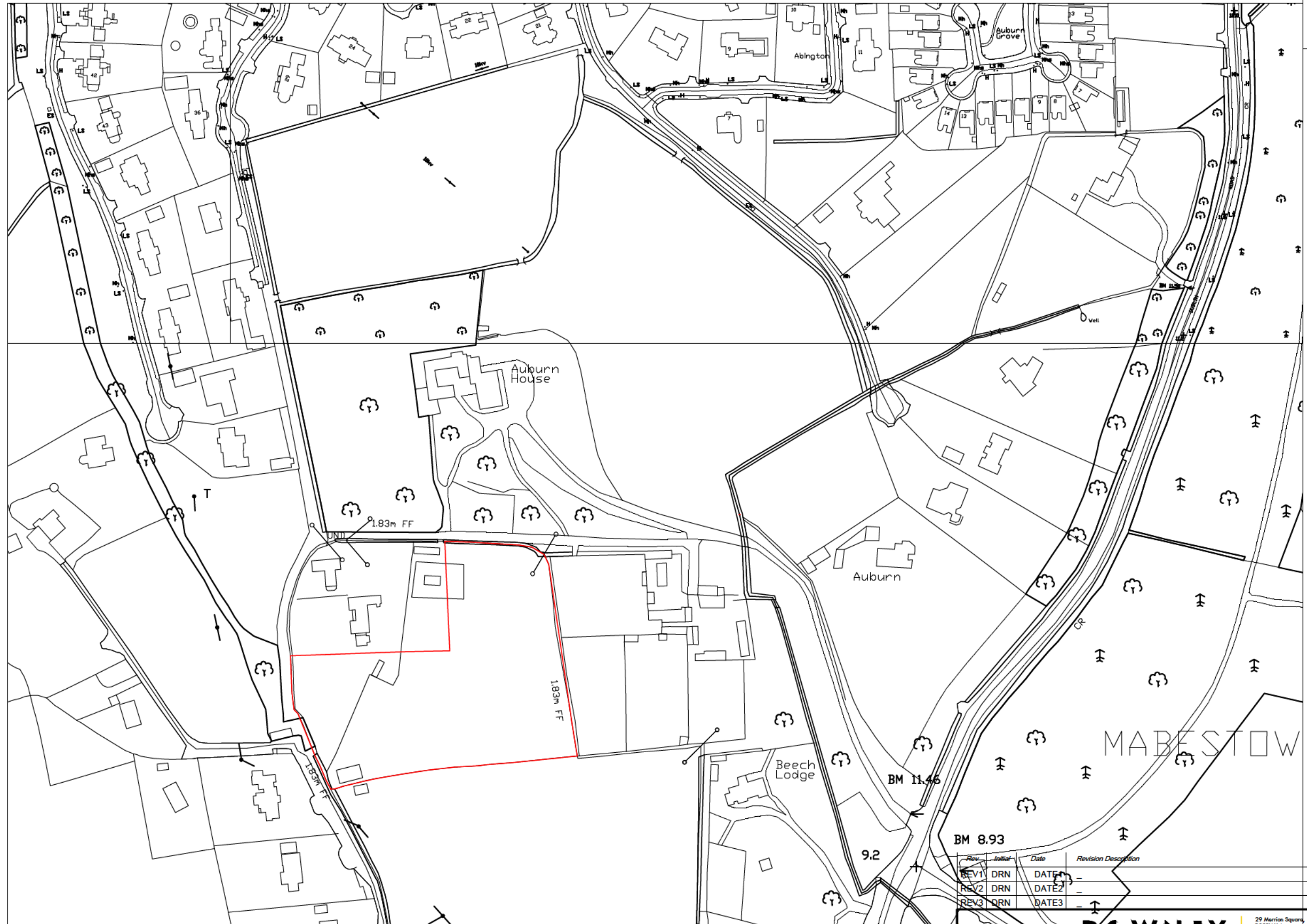
7.0 CONCLUSION

DOWNEY, Chartered Town Planners, 29 Merrion Square, D02 RW64, have prepared this submission, to the Draft Residential Zoned Land Tax (RZLT). This submission is made on behalf of our client, [REDACTED] [REDACTED] regarding their lands at Streamstown, Malahide, Co. Dublin.

As outlined in the submission, the lands are zoned "RA – Residential Area" under current Development Plan. It must be noted that the lands are not immediately serviced by wastewater facilities. To provide residential development on these lands, materially significant works are required in relation to wastewater management. Therefore, the fact that the lands are not adequately serviced at present means that they do not meet the criteria under the Consolidated Taxes Act 2007 in order to be considered 'in scope' for the purposes of RZLT.

In light of the above, DOWNEY respectfully request that Fingal County Council take into consideration the grounds of this submission and ensure that in accordance with the *Taxes Consolidation Act 1997*, the subject lands are excluded from the final RZLT map.

GENERAL NOTES -
 ** Do not scale from this drawing
 ** Use figured dimensions only
 © This drawing is copyright. No part of this document may be re-produced or transmitted in any form or stored in any retrieval system from the copyright holder, except as agreed for use on a project, for which the document was originally issued.



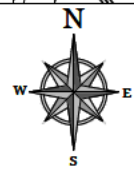
SITE LOCATION MAP

SCALE 1:2500

 SITE OUTLINED RED - (1.6528 Hectares)

CYAL50180415
 © Ordnance Survey Ireland/Government of Ireland

MAP SHEETS
 2995-11
 2995-12
 2995-C



Rev.	Initial	Date	Revision Description
REV1	DRN	DATE1	-
REV2	DRN	DATE2	-
REV3	DRN	DATE3	-

DOWNEY

29 Merrion Square,
 Dublin 4
 +353 (0) 1 253 0220
 info@dwny.ie

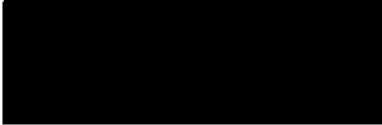
CLIENT	KINWEST_LTD.	SCALE @ A1:	-	PAPER SIZE	A3
PROJECT	STREAMSTOWN	SCALE @ A3:	1:2500	DRAWN BY:	K_DODD
DWG. TITLE	SITE_LOCATION_MAP	CHECKED BY:	D_DUFFY	DATE:	15.12.22
		REVISION:	REV	DATE:	15.12.22
				DRWG NO.:	PL-1001

APPENDIX 1 – LAND REGISTRY MAP AND FOLIO



The Property Registration Authority
An tÚdarás Clárúcháin Maoine

Land Registry Sealed and Certified Copy Folio (& Filed Plan)



This page forms part of the official document. Do not detach.

Folio Number: DN171244F
Application Number: D2019LR138965C
Your Reference: AEH/30309.5

This document comprises an office copy of the Land Registry record for the above mentioned folio/filed plan as of the date appearing.

Details of **dealings pending** (if any) on the enclosed folio/filed plan are listed in the **Schedule** below.

An officer duly authorised by the Property Registration Authority.



Schedule

Notes:

1. Filed plans should be read in conjunction with the Register. The description of the land in the Register or on the filed plan is not conclusive as to the boundaries or extent of the land (see Section 85 of the Registration of Title Act 1964, as substituted by Section 62 of the Registration of Deeds and Title Act, 2006).
2. Filed plans greater than A3 in size may be provided as separate A3 tiles with an overlap and print gutter. When aligning the tiled sheets, customers are advised to use the underlying topographical detail.
3. On receipt of this record, please check to verify that all the details contained therein are correct. If this is not the case, please return the document to the Property Registration Authority immediately.

Land Registry

County Dublin

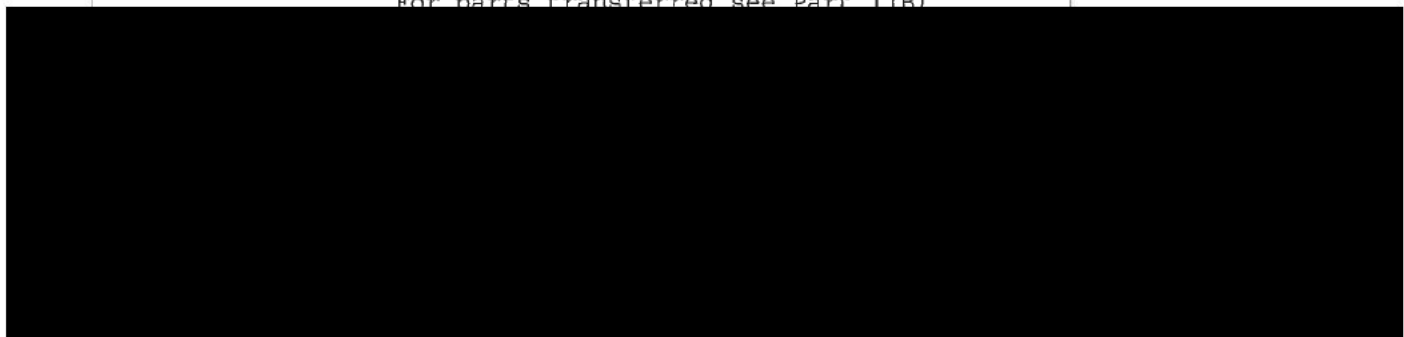


Register of Ownership of Freehold Land

Part 1(A) - The Property

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

For parts transferred see Part 1(B)



Land Registry

County Dublin

Folio 171244F

Part 1(B) - Property

Parts Transferred

No.	Prop No:	Instrument:	Date:	Area (Hectares) :	Plan:	Folio No:

Land Registry

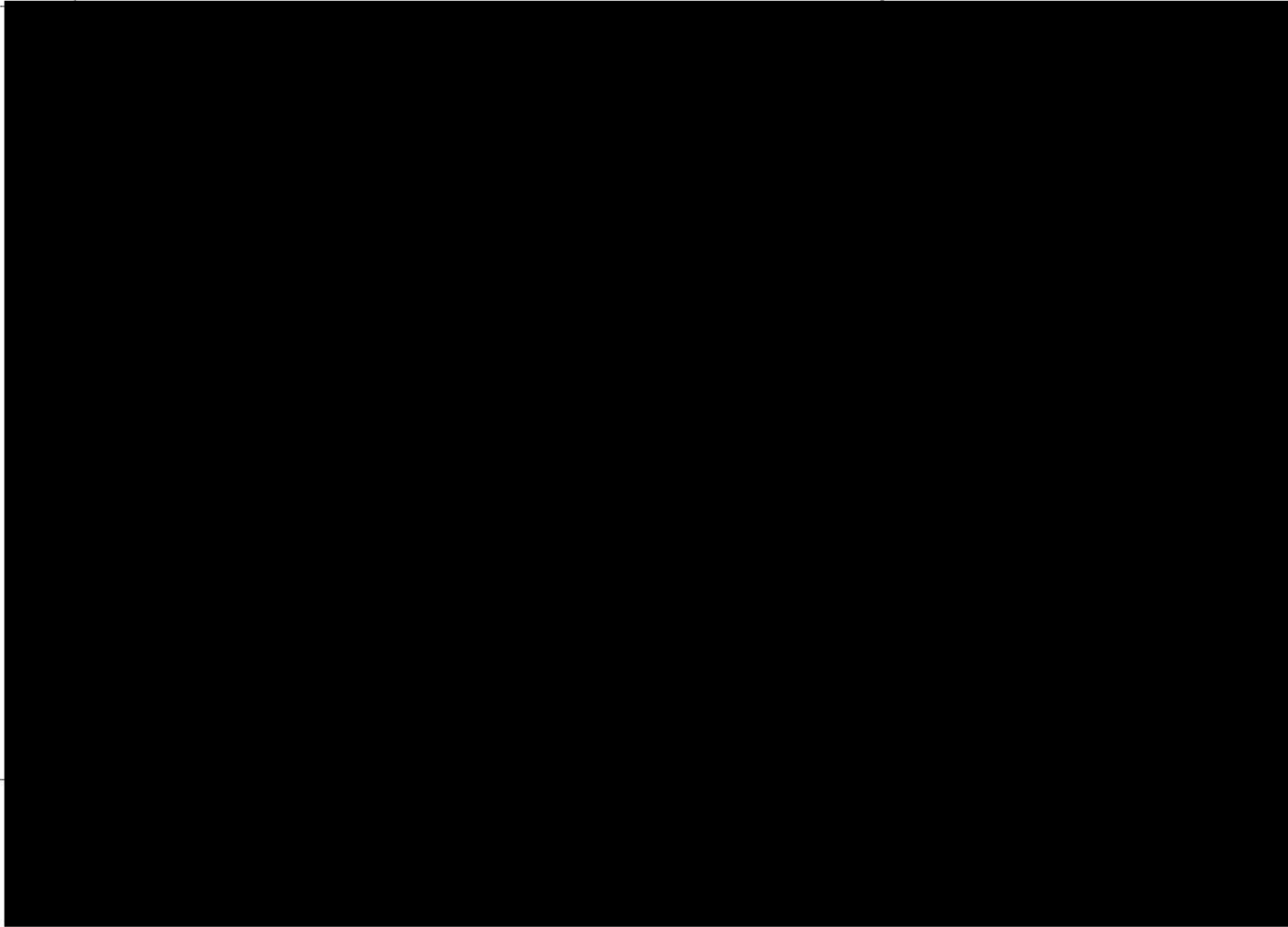
County Dublin

Folio 171244F

Part 2 - Ownership

Title ABSOLUTE

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965
-----	--

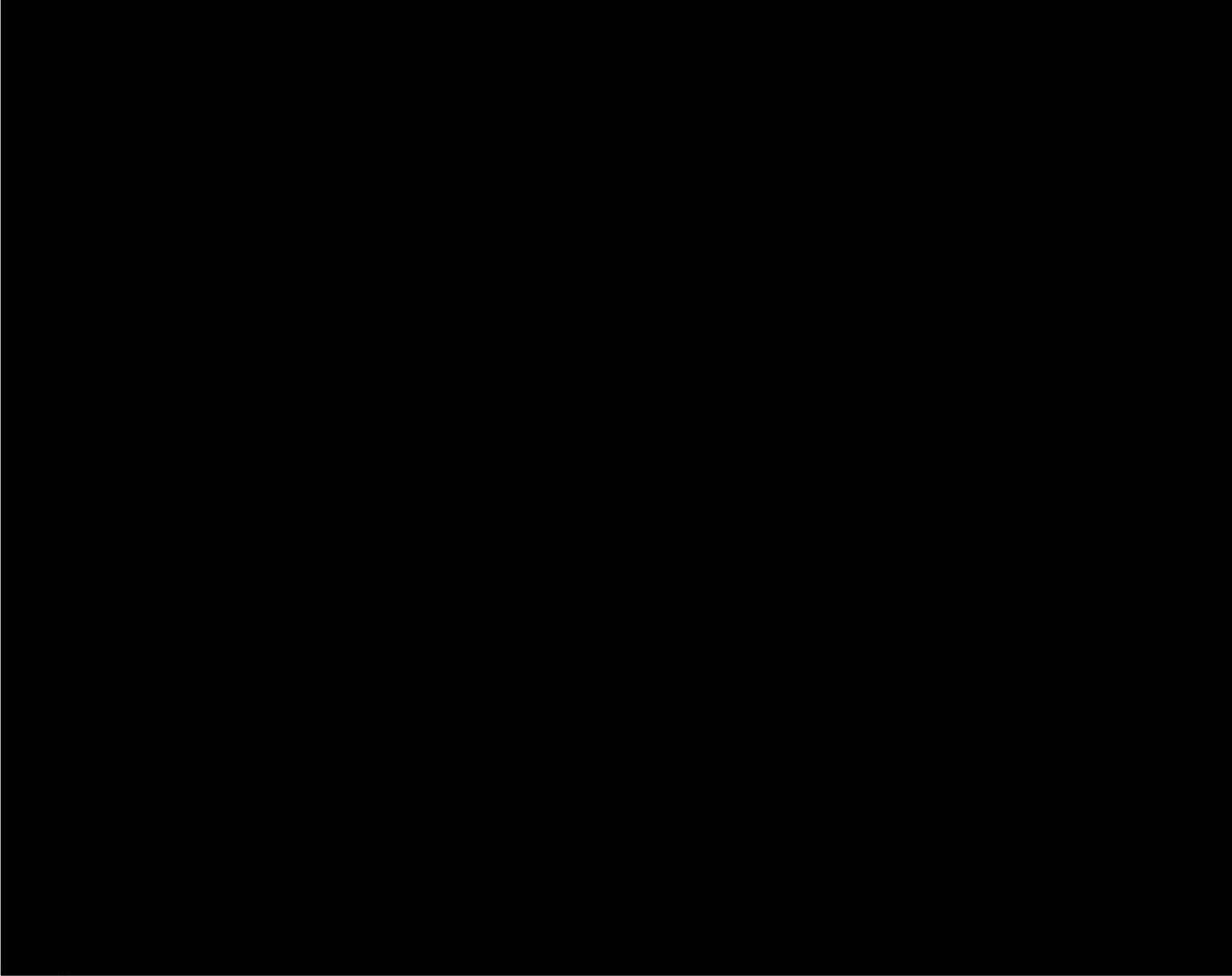


Land Registry

County Dublin

Folio 171244F

Part 3 - Burdens and Notices of Burdens

No.	Particulars
	

Land Registry

County Dublin

Folio 171244F



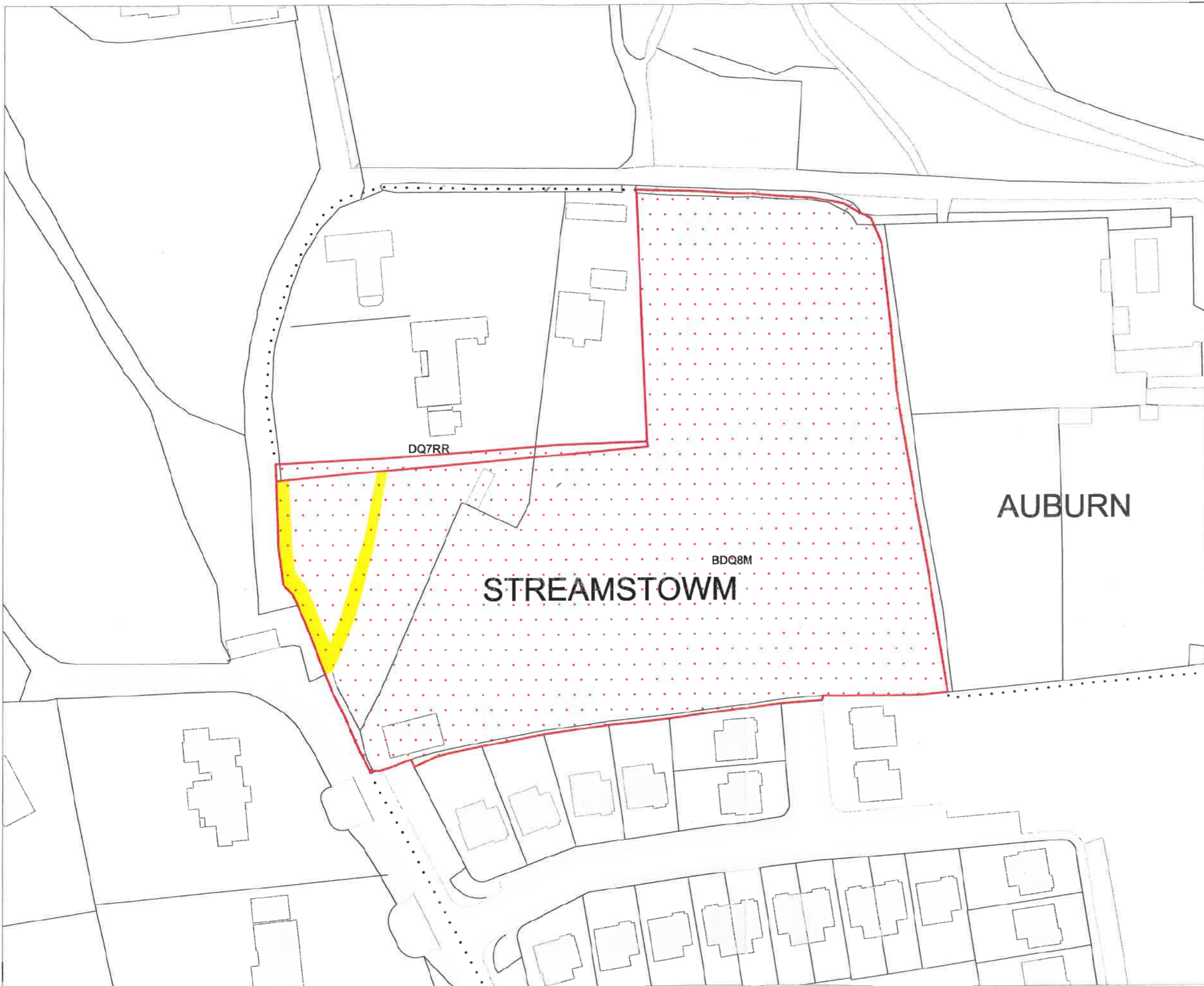


This map should be read in conjunction with the folio.

Registry maps are based on OSI topographic mapping. Where registry maps are printed at a scale that is larger than the OSI published scale, accuracy is limited to that of the original OSI map scale.

For details of the terms of use and limitations as to scale, accuracy and other conditions relating to Land Registry maps, see www.prai.ie.

This map incorporates Ordnance Survey Ireland (OSi) mapping data under a licence from OSi. Copyright © OSi and Government of Ireland.



(centre-line of parcel(s) edged)

- Freehold
- Leasehold
- SubLeasehold

Burdens (may not all be represented on map)

- Right of Way / Wayleave
- Turbary
- Pipeline
- Well
- Pump
- Septic Tank
- ▽ Soak Pit

A full list of burdens and their symbology can be found at: www.landdirect.ie



The registry operates a non-conclusive boundary system. The Registry Map identifies properties not boundaries meaning neither the description of land in a register nor its identification by reference to a registry map is conclusive as to the boundaries or extent. (see Section 85 of the Registration of Title Act, 1964). As inserted by Section 62 of the Registration of Deed and Title Act 2006.

